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Message Text

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ACTION EB-08

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EO 11652: NA
TAGS: EWWT UNCTAD AS
SUBJECT: RE-EVALUATION OF USG PARTICIPATION IN FIFTH UNCTAD INTER-GOVERNMENTAL PREPARATORY GROUP (IPG) ON INTERNATIONAL MULTIMODAL TRANSPORT

REF: (A) STATE 62866, (B) STATE 24300

GOA HAS FINALLY RESPONDED TO EMBASSY REQUEST FOR REACTIONS ON SUBJECT QUESTION IN FORM OF LETTER FROM D. STURKEY, ASSISTANT SECRETARY, ECONOMIC ORGANIZATIONS BRANCH, DFA. TEXT OF LETTER FOLLOWS:
"AUSTRALIA WAS DISAPPOINTED WITH PROGRESS AT IPG 4 AS WE WERE OPTIMISTIC THAT THE COMMON UNDERSTANDING AGREED AT IPG 8 (RES) IN JANUARY 1977, WHICH SET OUT THE BROAD FEATURES OF A CONVENTION, WOULD LEAD TO A FIRST DRAFT OF A CONVENTION.
"IN AUSTRALIA'S VIEW THE PRINCIPAL REASONS FOR THIS WERE REGIME UNTIL AFTER THE MARCH 1978 HAMBURG CONFERENCE ON THE CARRIAGE OF GOODS BY SEA AND INSISTENCE BY DEVELOP-ING COUNTRIES TO INCLUDE PUBLIC LAW PROVISIONS LEADING TO THE DIRECT REGULATION AND CONTROL OF MULTIMODAL
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TRANSPORT OPERATIONS. PRESSURES FROM INTERESTS IN SOME COUNTIRES TO MAINTAIN THE STATUS QUO HAVE ALSO NOT HELPED PROGRESS IN THE IPG.
"DEVELOPED COUNTRIES SEE THE CONVENTION APPLICABLE ONLY TO AREAS OF PRIVATE LAW GOVERNING CONTRACTUAL RELATIONSHIPS (E.G. LIABILITY AND DOCUMENTATION) WHERE MODAL RULES CANNOT EFFECTIVELY COPE WITH MULTIMODAL TRANSPORT OPERATIONS.

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AUSTRALIA CONTINUES TO OPPOSE A PUBLIC LAW CONVENTION.
"WE CONSIDER DEVELOPED COUNTRIES NOW HAVE ONLY A TENUOUS INTEREST IN PURSUING THE PUBLIC LAW VERSUS PRIVATE LAW ARGUMENT WITH DEVELOPING COUNTRIES AND WE ENVISAGE THAT ALL DEVELOPED COUNTRIES WOULD NEED TO GIVE SERIOUS CONSIDERATION TO WITHDRAWAL FROM THE IPG IF SATISFACTORY PROGRESS CANNOT BE MADE AT IPG 5. TO HAVE ANY CHANCE OF WINNING DEVELOPED COUNTRY SUPPORT, NOT ONLY MUST LIABILITY ARRANGEMENTS BE LARGELY RESOLVED, BUT DEVELOPING COUNTRIES MUST BE PREPARED TO BACK DOWN ON PUBLIC LAW ISSUES. A FURTHER SERIES OF PROTRACTED MEETINGS IS UNLIKELY TO BE ACCEPTABLE TO DEVELOPED COUNTRIES AND AUSTRALIA WOULD, IN THESE CIRCUMSTANCES, HAVE TO CONSIDER ITS FURTHER INVOLVEMENT IN THE IPG.

"AS A MAJOR TRADING NATION AND A SIGNIFICANT USER OF MULTIMODAL TRANSPORT SERVICES, AUSTRALIA CONTINUES TO SUPPORT WORK IN THE UN TOWARDS A CONVENTION. THIS IS BASED, AS A RESULT OF OUR DETAILED INVESTIGATIONS, ON THE BENEFITS OF GREATER CERTAINTY AND PREDICTABILITY OF CONTRACTUAL RELATIONSHIPS BETWEEN MULTIMODAL TRANSPORT OPERATORS AND SHIPPERS, PROTECTION OF SHIPPER INTERESTS THROUGH COST SAVINGS AND INCENTIVES TO MTO EFFICIENCY. HOWEVER THE AUSTRALIAN GOVERNMENT AND COMMERCIAL INTERESTS ARE AWARE OF THE DANGERS IN STIFLING THE DEVELOPMENT OF MULTIMODAL TRANSPORT OR ADVERSELY AFFECTING EXISTING COMMERCIAL ARRANGEMENTS AS A RESULT OF A RIGID UNWORKABLE PUBLIC LAW
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CONVENTION. IT IS CONSIDERED THAT NO CONVENTION WOULD BE PREFERABLE TO A PUBLIC LAW CONVENTION.
"AUSTRALIA HAS PARTICIPATED POSITIVELY IN THE DEVELOPMENT OF A CONVENTION AND THROUGH PURSUING A MODERATE REALISTIC APPROACH, WE BELIEVE OUR VIEWS HAVE BEEN TAKEN SERIOUSLY BY THE IPG. WE HAVE OPPOSED THE INCLUSION OF DETAILED PUBLIC LAW PROVISIONS BUT HAVE ATTEMPTED TO ENSURE THAT THE INTEREST OF THE DEVELOPING COUNTRIES ARE TAKEN INTO ACCOUNT IN OTHER WAYS, IN ACCORDANCE WITH THE COMMON UNDERSTANDING.
"IT IS CONSIDERED IN OUR BEST INTEREST TO MAINTAIN SUPPORT FOR A CONVENTION UNTIL THE OUTCOME OF IPG 5. WE WILL, OF COURSE, CONTINUE TO LIAISE CLOSELY WITH THE UNITED STATES, CANADA AND NEW ZEALAND. IN THIS REGARD, WE FAVOUR THE CONVENING OF A FOUR COUNTRY MEETING AS PLANNED, AT THE TIME OF THE PROPOSED OECD DISCUSSIONS IN JUNE ON THE CONVENTION.
"IN LIGHT OF THE ABOVE, WE WOULD HOPE THAT THE UNITED STATES GOVERNMENT WILL CONTINUE TO PARTICIPATE IN THE NEGOTIATIONS ON THE CONVENTION UNTIL AT LEAST THE CONCLUSION OF IPG 5. A PARTICULAR CONCERN FOR US IS THAT IF THE UNITED STATES WITHDRAWS NOW, IT WOULD

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SERIOUSLY IMPEDE PROGRESS TOWARD A CONVENTION.
"I HAVE TAKEN THE LIBERTY OF FORWARDING COPIES OF THIS LETTER TO THE HIGH COMMISSION OF NEW ZEALAND AND CANADA, FOR THEIR INFORMATION. UNQUOTE.
ALSTON

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